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In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1279

MARY ELIZABETH BLETHROADE SUTT, ET AL.,
Petitioners,

vs.

THE FIRST NATIONAL BANK OF
KANSAS CITY, ET AL.,
Respondents.

No. 74-1370

LAKESIDE HOSPITAL ASSOCIATION, ET AL.,
Petitioners,

vs.

THE FIRST NATIONAL BANK OF
KANSAS CITY, ET AL.,
Respondents.

BRIEF OF RESPONDENT MARTIN LUTHER KING, JR., MEMORIAL HOSPITAL IN SUPPORT OF PETITIONS FOR WRITS OF CERTIORARI TO THE SUPREME COURT OF MISSOURI

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TABLE OF CONTENTS

Opinion Below 2

Jurisdiction 2

Statement of the Issues Presented 2

Statutory and Constitutional Provisions Involved 3

Statement of the Case 3

How the Federal Questions Were Raised and Decided Below 5

Reasons for Granting the Writ 5

Conclusion 6

TABLE OF AUTHORITIES

Evans v. *Newton*, 382 U.S. 296 (1966) 6

Girard College Case (*Commonwealth of Pennsylvania* v. *Board of Directors of City Trusts of the City of Philadelphia*), 353 U.S. 230 (1957) 6

Lemon v. *Kurtzman*, 403 U.S. 602 (1971) 6

Shelley v. *Kraemer*, 334 U.S. 1 (1948) 6

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Respondent Martin Luther King, Jr., Memorial Hospital respectfully submits that Writs of Certiorari as requested by petitioners should be issued in the companion cases of *Mary Elizabeth Blethroade Sutt, et al.* v. *The First National Bank of Kansas City, et al.*, No. 74-1279, and *Lakeside Hospital Association, et al.* v. *The First National Bank of Kansas City, et al.*, No. 74-1370, and in support thereof states as follows:

OPINION BELOW

The opinion of the Supreme Court of Missouri, yet unpublished, is set out in full in Appendix A to the Petition of the Known and Unknown Heirs herein at pages A1-31; the opinion and judgment of the trial court (not to be published) appears in Appendix B to the said Petition herein at A32-44.

JURISDICTION

This respondent adopts the jurisdictional statement of Petitioners Lakeside Hospital Association, et al.

STATEMENT OF THE ISSUES PRESENTED

Whether the decree of the Supreme Court of Missouri in this cause, affirming the judgment of the Circuit Court for the Sixteenth Judicial Circuit of Missouri in a special action to construe the language of a will and codicil establishing a tax-exempted, perpetual public charitable trust, the execution of which is by law to be supervised and enforced by the defendant Attorney General of Missouri through action in the Courts of that State, contravenes the Establishment and Equal Protection Clauses of the First and Fourteenth Amendments to the Constitution of the United States, in that the decree:

(a) mandates the trustee thereof, a National Banking Association, to limit disbursements to the recipients of sums held in trust to (i) four "Protestant Christian" hospitals, selected by the trial court's

decree from among all public non-profit hospitals within Jackson County, as "having a special relationship to and at least some measure of control by a Protestant Christian Church, and/or" (ii) to patients in said four hospitals who were "born of white parents in the United States of America";

and further

(b) thereby excludes from the benefits of the said public charitable trust (i) the nineteen other state-licensed, public non-profit hospitals serving the citizens of the county; (ii) all patients of such excluded hospitals who are not native born and caucasian; and (iii) subject to the trustee's discretion, approved in advance, all non-white, non-native patients of the four hospitals selected.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

This Respondent adopts the statement of statutory and constitutional provisions involved filed herein by Mary E. Blethroade Sutt, et al., the Known and Unknown Heirs, Petitioners.

STATEMENT OF THE CASE

This Respondent adopts the Statement of Facts set forth in the petition of the Lakeside Hospital Association, et al., Petitioners, and supplements such Statement with the following facts relating to Martin Luther King, Jr., Memorial Hospital, Respondent:

Historically, respondent traces its beginning as a community service agency to the year 1901 when its predecessor Wheatley Provident Hospital began operation. In 1917 Wheatley became a not-for-profit corporation by acceptance of the Missouri Statute. (T-568).

During the period just preceding 1969 twenty Negro Baptist Ministers formed a new not-for-profit corporation named "The Greater Kansas City Baptist and Community Hospital Association," for the purpose of acquiring Wheatley and in order to provide a hospital in the Negro community operated and controlled by Negroes. In 1969 the Wheatley corporation merged with the new corporation and the hospital was renamed the Martin Luther King, Jr., Memorial Hospital. (T-566).

The twenty Baptist Ministers sought and were granted permission by the Southern Baptist Convention to use the word "Baptist" in their corporate name, but the Ministers felt that wider community support would be forthcoming if the word "Community" was added to the title of the corporation now owning Martin Luther King, Jr., Memorial Hospital. (T-569).

Over 75% of the King Hospital's Board of Directors (21 out of 28 members) are Baptists; and as a matter of policy "if you know where your communion is buttered, you had better be a Baptist, or reelect them because it is a Baptist supported and controlled institution from that standpoint." (T-569).

King Hospital's By-laws in Article X, Section 3, provide that five percent of the total bed capacity shall be "for the exclusive use of patients not able to pay for their hospital care." In actual practice, the charitable usage runs as high as 18%. (T-570).

King Hospital is integrated and reached a high of serving six white patients in 1968. It averages about 1,400 patients per year; has 25 white and 22 Negro physicians on its staff and is qualified for Medicare and Medicaid. (T-570-1).

King Hospital has a rotating Baptist Chaplain, and the hospital is fully accredited by the American Hospital Association. (T-571).

Wheatley was a member of the American Protestant Hospital Association until 1969 when it dropped its membership for financial reasons. (T-571).

King Hospital has no restriction in its admissions policy as to race, creed, color or political affiliation. (T-575).

HOW THE FEDERAL QUESTIONS WERE RAISED AND DECIDED BELOW

This Respondent adopts the Statement of how the Federal Questions Were Raised and Decided Below as it appears in the Petition of Lakeside Hospital Association, et al., Petitioners, filed herein.

REASONS FOR GRANTING THE WRIT

This Respondent at this point adopts the Reasons For Granting the Writ set forth in the Petition of Mary E. Blethroade Sutt, et al., Petitioners, and also those set forth in the Petition filed herein by Lakeside Hospital Association, et al., Petitioners.

CONCLUSION

The uncontroverted evidence in the record clearly establishes racial and religious discrimination. Respondent submits that the term "Protestant Christian Hospital" is not susceptible of rational explication, for if there were such category of institutions, how then is it that this respondent is excluded along with petitioners Lakeside, et al.? King Hospital is as "Protestant Christian" as any others of the respondent hospitals, and, indeed, admits native born white patients for care, yet it does not participate in testator's bounty under the decision complained of.

Respondent respectfully urges that the Petitions for Writs of Certiorari to the Supreme Court of Missouri should be granted since the judgment below is contrary to the controlling decisions of this Court in *Shelley* v. *Kraemer*, 334 U.S. 1 (1948); *Evans* v. *Newton*, 382 U.S. 296 (1966); the *Girard College* case, 353 U.S. 230 (1957); and *Lemon* v. *Kurtzman*, 403 U.S. 602 (1971).

Respectfully submitted,

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